

The County of Yuba

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September 30, 2022

Ellen Leonida
PRA Responses
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San Francisco, CA 94104
Sent via e-mail to: prareponse@braunhagey.com

Re: Public Records Act Request to Yuba County

Dear Ms. Leonida,

This letter serves as Yuba County's ("the County") response, under California Government Code §§ 6253(c) and 6255(b), response to your supplemental Public Records Act request dated September 7, 2021, where you seek records from the County regarding the implementation of the California Racial Justice Act—specifically case, individual, and/or charge-level data in possession or control of Yuba District Attorney's Office, for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present.

Please note that the County will not produce privileged records or documents that are otherwise exempt from disclosure pursuant to California Government Code section 6254(k), including, but not limited to, the deliberative process privilege; preliminary notes, drafts and memoranda exemption (Gov. Code §6254(a)); investigative records (Gov. Code §6254(f)); attorney-client privilege and/or attorney work product (Gov. Code §6254(k)); official information privilege (Evid. Code §1040; Gov. Code §6254(k)); permit applicant's personal financial data information (Gov. Code § 6254(n)); and the public interest exemption (Gov. Code §§ 6254(a); 6255).

Without waiving the above exemptions, the County responds as follows:

Data Requested	Existence of Data	Exemptions
1. Unique identifier(s) associated with each defendant, each case, and each arrest		
a. Name of defendant	Included in screened cases report	Exempt from disclosure under Penal Code sections 13300-13305; Westbrook v. County of Los Angeles

		(1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
b. Court case number(s)	Included in screened cases report (if entered)	Exempt from disclosure under Penal Code sections 13300-13305; Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
c. Arresting agency number(s)	Included in screened cases report (if entered)	Exempt from disclosure under Penal Code sections 13300-13305; Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
d. Any other unique identifier(s)	Vague and overbroad	Exempt from disclosure under Penal Code sections 13300-13305; Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
2. Demographic and other information concerning each defendant		
a. Race	Included in screened cases report (if entered)	
b. Ethnicity	Currently not tracked	
c. Country of origin or nationality	Currently not tracked	
d. Gender/sex	Included in screened cases report (if entered)	

e. Age or date of birth	Included in screened cases report (if entered) – Redacted	Date of birth is exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
f. Prior criminal convictions of a defendant	Not contained in stock reports	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
3. Information regarding each arrest		
a. Zip code of arrest	Currently not tracked	
b. Date of arrest	Included in screened cases report (if entered)	
c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)	Included in screened cases report (if entered)	
4. ADA assigned to the case	Included in screened cases report (if entered)	
5. Decisions to decline to prosecute		
a. Date of decision to decline to prosecute	Included in screened cases report (if entered)	
b. Identity of person who made final decision to decline prosecution	Included in screened cases report (if entered)	
c. Charges declined to prosecute (charge-level declinations as opposed to	Included in screened cases report (if entered)	

individual- or case-level where available)		
<p>d. Reasons for the declinations to prosecute, including but not limited to:</p> <ul style="list-style-type: none"> i. police misconduct involved in case; ii. injuries to persons involved; iii. injuries to suspect; iv. financial loss to persons involved; v. prior criminal record of suspect; and vi. victim's level of cooperation in prosecuting case 	Included in screened cases report (if entered)	Exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2), and 6255(a); Rackauckas v. Superior Court (2002) 104 Cal.App.4th 169, 176-178; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)		
a. Date of diversion offer	Currently not tracked	Penal Code subsection 13300(n) provides: “Notwithstanding subdivision (l) or (m), a local criminal justice agency shall not release information under the following circumstances: (1) Information concerning an arrest for which diversion or a deferred entry of judgment program has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed. (2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated. (3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully
b. Type of diversion offered	Currently not tracked	
c. Whether diversion accepted	Currently not tracked	
d. Whether diversion completed	Currently not tracked	

		completed or the individual was exonerated.”
7. Charges filed		
a. Statutes (applicable code section)	Included in screened cases report (if entered)	
b. Severity (i.e., infraction, misdemeanor, wobbler, felony)	Included in screened cases report (if entered)	
c. Any enhancements	Included in screened cases report (if entered)	
d. Maximum sentence	Included in screened cases report (if entered)	
8. Factors considered in deciding charges to file, and level of charges, including		
a. Injuries to persons	Currently not tracked	
b. Financial loss to persons	Currently not tracked	
c. Status of victim (i.e., law enforcement, child, spouse, etc.)	Currently not tracked	
d. Prior criminal history of defendant	Currently not tracked	Exempt from disclosure under Penal Code sections 13300-13305; Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
e. Victim’s cooperation	Currently not tracked	
9. Bail/custody information		
a. Bail amount requested	Currently not tracked	
b. Detention orders sought	Currently not tracked	
c. Whether bail was set or denied	Currently not tracked	

d. Whether individuals were released on bail or not	Currently not tracked	
e. Pre-plea/pre-trial custody status	Currently not tracked	
10. Plea offers		
a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements	Currently not tracked	Exempt from disclosure under Government Code subsections 6254(p)(2), 6254(k), and 6255(a); Evidence Code section 1153; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
b. Dates of plea offers	Currently not tracked	
c. Sentence(s)/disposition(s) offered	Currently not tracked	Exempt from disclosure under Government Code subsections 6254(p)(2), 6254(k), and 6255(a); Evidence Code section 1153; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
d. Records of whether any plea offer was accepted, including date of acceptance	Currently not tracked	
11. Case outcomes		
a. Charges of conviction	Included in screened cases report (if entered)	
b. Dismissed charges	Included in screened cases report (if entered)	
c. Sentences	No reports available	
12. Counsel for defendant, whether public defender or private counsel	No reports available	

13. Demographic and other information concerning victims		
a. Race	No reports available	
b. Ethnicity	No reports available	
c. Gender/sex	No reports available	
14. Recommendations regarding parole	Currently not tracked	
15. Recommendations regarding pardon or commutation	Currently not tracked	

Additional Explanation Regarding Exemptions

Most of data requested is from the County’s local summary criminal history information under Penal Code section 13300. Pursuant to section 13302, “An employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.” Subsection 13300(b) enumerates the list of officials and agencies entitled to access “when needed in the course of their duties,” and subsection 13300(c) enumerates a list of officials and agencies entitled to access only upon a showing of “compelling need.” (Penal Code, § 13300, subs. (b)-(c).) Neither your client nor your firm come within any of the numerous agencies and officials entitled to local summary criminal history information as a matter of right or upon a showing of compelling need. Nor does the request come within a release permitted under subsection 13300(j) because the “release of the information would enhance public safety, the interest of justice, or the public’s understanding of the justice system and the person making the request declares that the request is made for a scholarly or journalistic purpose.” (Penal Code, § 13300, subs. (j), italics added.) Overall, “[t]he language of Penal Code section 13300 et seq., demonstrates that the Legislature intended nondisclosure of criminal offender record information to be the general rule.” (Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 164.)

The County has nonetheless determined that certain data from the local summary criminal history information may be released in the Karpel report. First, subsection 13300(h) provides, “It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.” (Penal Code, § 13300, subs. (j), italics added.) Second, section 13302 does not “prohibit a public prosecutor from accessing and obtaining information from the public prosecutor’s case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act.” (Penal Code, § 13302, italics added.) As recognized in subsection 13300(h), “[t]he state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records.” (Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 165-166 [citing Craig v. Municipal Court (1979) 100 Cal.App.3d 69, 76-77].) Given the ability to use the released data to evaluate any potential claims under Racial

Justice Act (Assembly Bill No. 2542) without linking that data to each individual and infringing on the privacy rights of every individual in the County subject to arrest and potential prosecution since 2015, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) The County therefore cannot release data that includes or could easily lead to the “identity of the subject of the record” consistent with Penal Code sections 13300 to 13305 and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).

While not contained in the local summary criminal history information, the request also seeks information in files that constitutes attorney work product, and those records will not be released pursuant to Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080. Any record including the analysis of the District Attorney or a Deputy District Attorney about a decision not to prosecute a case is also exempt under the deliberative process exemption in Government Code subsection 6254(p) and pursuant to Government Code subsection 6254(f). (See *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174-176 [“The investigation exemption does not terminate when the investigation terminates” and a memorandum of a deputy district attorney about his decision not to bring charges prepared as part of a criminal investigation is exempt if it contains his “legal opinions, thoughts, impressions and conclusions.”].) Given the ability to use the released data to evaluate any potential claims under the Racial Justice Act without infringing on the confidential deliberative process of the District Attorney’s Office and thereby hindering future prosecutions, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) For these reasons, any data or records containing analysis about the reasons for declining to prosecute will not be released under Government Code subsections 6254(f), 6254(p)(2), and 6255(a), Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080.

Lastly, the County will not produce any plea offers made or reasons for plea offers. First, decisions by the District Attorney to offer a plea and the reasons for the offer are exempt from disclosure under the deliberative process exemption in Government Code section 6254(p)(2) and include attorney work product exempt from disclosure under Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080. Second, while this request is made to obtain evidence that may later be used in a challenge under the Racial Justice Act, evidence of plea offers could not be used for that purpose. (See Evid. Code, § 1153 [“Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible in any action or in any proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.”], italics added.) Third, the District Attorney believes that the release of plea offers and reasons for such offers will undermine his ability to carry out his duties in future criminal cases. Given the ability to use the released data to evaluate any potential claims under the Racial Justice Act without hampering the ability of the District Attorney’s Office to seek future plea agreements in the interest of justice, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) For these reasons, any data or records containing this information will not be released under Government Code sections 6254(p)(2), 6254(k), and 6255(a), Evidence Code section 1153, Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080.

Ms. Ellen Leonida
Page 9 of 9
September 30, 2022

The foregoing documents represent the totality of non-privileged and non-exempt documents in the County's possession, in response to the request dated September 7, 2021. Thus, this the County's final response and will not be supplemented

The decision to release certain records and/or to object to the release of other records was made by Yevgeniy P. Pislar, Deputy County Counsel.

If you have any further questions or concerns, please do not hesitate to contact our office.

Sincerely,
Yuba County Counsel's Office



Yevgeniy P. Pislar
Deputy County Counsel